No. 15719

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United States
COURT OF APPEALS
for the Ninth Circuit

WILLIAM P. ROGERS, as Attorney General of the United States of America,

Appellant,

v.

URHO PAAVO PATOKOSKI,

Appellee.

Appeal from the United States District Court for the District of Oregon.

BRIEF FOR APPELLANT

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INDEX

Page

Jurisdictional Statement 1

Statement of the Case 2

Applicable Statutes 6

Questions Presented 7

Specifications of Error 7

Summary of Argument 7

Argument

I. Appellant Does Not Dispute the Acquisition of United States Citizenship and Does Not Contend That Such Citizenship Was Lost by Taking an Oath of Allegiance 11

II. Expatriation Resulted from the Military Service 13

III. Expatriation Resulted from Voting in a Political Election in Finland 18

IV. Expatriation Was Not Avoided by Appellee's Ignorance of the Legal Consequences of His Actions 19

Conclusion 25

TABLE OF CASES

Page

Acheson v. Kuniyuki, 189 F. 2d 741 (C.A. 9, 1951), rehearing denied 190 F. 2d 897, cert. den. 342 U.S. 942 ..... 10, 18, 23, 24

Acheson v. Wohlmuth, 196 F. 2d 866 (C.A. D.C. 1952) 10, 18, 24

Augello v. Dulles, 220 F. 2d 344 (C.A. 2, 1955) 13

Coumas v. Brownell, 222 F. 2d 331 (C.A. 9, 1955) 8, 14, 15

De Cicco v. Longo, 46 F. Supp. 170 (Conn. 1942) 13

Mackenzie v. Hare, 239 U.S. 299 (1915) 23

Nishikawa v. Dulles, 356 U.S. 129 (1958) 8, 14, 15

Perez v. Brownell, 356 U.S. 44 (1958) 10, 24

Savorgnan v. United States, 171 F. 2d 155 (C.A. 7, 1948) 23, 24

Savorgnan v. United States, 338 U.S. 491 (1950) 10, 22, 23, 24, 25

Soccodato v. Dulles, 226 F. 2d 243 (C.A. D.C. 1955) 13

STATUTES

Act of March 2, 1907; Sec. 2, 34 Stat. 1228 ..... 11, 13

Act of Aug. 7, 1946, 60 Stat. 865 19

Act of Aug. 16, 1951, 65 Stat. 191 19

Immigration and Nationality Act of 1952
Sec. 349, 8 U.S.C. 1481 6
Sec. 352, 8 U.S.C. 1484 12
Sec. 360, 8 U.S.C. 1503 1
Sec. 402(j), 66 Stat. 278 19

Nationality Act of 1940
Sec. 401, 54 Stat. 1168 6
Sec. 401(c), 54 Stat. 1169 ..... 8, 13
Sec. 401(e), 54 Stat. 1169 ..... 9, 18
Sec. 404, 54 Stat. 1170 12

Revised Statutes, Sec. 1993 12

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Appeal from the United States District Court for the District of Oregon.

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal by the Attorney General from a declaratory judgment of United States citizenship. The suit was brought under Sec. 360 of the Immigration and Nationality Act of 1952, 8 U.S.C. 1503 (R. 3). The court below concluded that it had jurisdiction to award relief under that statute, and appellant does not dispute this conclusion.

STATEMENT OF THE CASE

Appellee was born in Finland on July 19, 1907 (R. 47, 29). His father was a Finn who previously had come to the United States and had lived here for a period of about eight years.[1] During that time the father became a naturalized citizen in Portland, Oregon, on August 13, 1894 (R. 60-61, 29, Exh. 1). However, the father went back to Finland in 1896 or 1897 and never returned to this country, continuing to live in Finland until his death in 1927 or 1928 (R. 47, 48; Dep. H. 5). After his return to Finland the father was married and appellee was born of that marriage at least 10 years after his father had left the United States (Id.).

Appellee continued to live in Finland until he was 40 years old. During this time he concededly knew that his father had become a naturalized citizen of the United States. His father had told him that he was an American citizen (R. 48); he remembered his "father stating that he was a citizen of the United States and could return to the United States at any time if necessary" (Dep. H. 5); he saw his father's naturalization paper for the first time "when my mother brought out that paper before she died" in 1945 (R. 54).[2]

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[1] The eight year period was fixed by appellee at p. 5 in his testimony at the deportation hearing, part of the administrative file introduced as Exh. 6 in the court below and lodged with this Court by stipulation of the parties. Hereafter, references to the deportation hearing will be designated Dep. H.

[2] The court's Finding IX (R. 31) that the naturalization certificate was found among the mother's papers after her death is thus not an accurate reflection of the record.

However, appellee never was told that he himself was an American citizen, never made any inquiry of the American Consul (located 600 miles away) or anyone else, and always acted as a Finnish citizen, which he unquestionably was (R. 48, 54). He never professed American citizenship, since he considered himself a citizen of Finland (R. 55, 60, 64, 67; Dep. H. 5).

While in Finland appellee was married in 1936 to a Finnish girl and they had three children, all born in Finland (Dep. H. 6; Exh. 4). He was called for compulsory military service in the Finnish Army on three occasions: (1) March, 1928—May, 1929, entering as a private and advancing to sergeant; (2) October, 1939—July, 1940, entering as a sergeant and promoted to second lieutenant; (3) June, 1941—October, 1944, entering as a second lieutenant and emerging as a first lieutenant (R. 49-53, 30). He asserted, however, that he did not apply for officer's status but that his advancement was automatic, based on length of service (R. 51, 52, 31). However, he admitted that most privates in the army were not promoted, and that his selection doubtless was occasioned by his satisfactory service, his educational background in a technical school—almost equal to university schooling, and his training as a construction (apparently equivalent to civil) engineer (R. 70, 74, 75).

At the time of his original entry into the army in 1928, when he was 20 years old, Patokoski took an oath of allegiance to Finland (R. 49, 30). However, he

denies taking an oath of allegiance in connection with the other two periods of military service (R. 53).

Appellee has admitted that he voted in a Finnish national election on at least one occasion, in 1946 (R. 57, 72, 81, 31). Finding of Fact VIII of the court below made the following observation: "At that time all persons were urged to vote to keep Communists from gaining control of the Finnish Government" (R. 31). This is a fair summary of appellee's explanation (R. 57).

After the war, conditions in Finland were unsatisfactory and appellee decided to come to the United States. He went to the American Consul in Helsinki, 600 miles from his home, and obtained a visitor's visa permitting him to enter the United States temporarily for a period of six months for the supposed purpose of studying construction techniques in this country (R. 54, 32). On February 24, 1947 he arrived in the United States, accompanied by his wife and three children, who also had received visitors' visas, and the family was admitted to the United States for a temporary period of six months (R. 58, 59, 32; Dep. H. 6). To the Consul and the immigration officers appellee represented that he was a citizen of Finland, and did not voice any claim to United States citizenship. At the end of the allotted six month period appellee and his family requested an extension of their temporary stay, but this request was denied (R. 59, 60, 32).

Deportation proceedings were then commenced against appellee and his family, charging them with having remained unlawfully in the United States beyond the period of their sanctioned temporary stay. On April

20, 1949 an order was entered finding them deportable but permitting them to depart voluntarily from the United States within three months. However, they did not leave, and sought to achieve permanent residence through private relief bills and an application for suspension of deportation, all of which were unsuccessful. On July 7, 1955 appellee and his family were notified that if they did not depart voluntarily from the United States by July 30, 1955 the order permitting their voluntary departure would be withdrawn without further notice and they would be expelled from the United States. They did not depart and on December 30, 1955 an order was entered granting them an additional 30 day period, but specifying that if they did not go by then a final order of deportation would be entered (R. 32, 33; Exh. 6). Execution of the deportation order has been deferred pending the outcome of this litigation.

On July 22, 1955 appellee instituted this action for a declaratory judgment of United States citizenship in the United States District Court for the District of Oregon (R. 3). Afer a trial before Chief Judge McColloch on October 29, 1956, at which appellee testified and a number of exhibits were introduced (R. 40 et seq.), the court granted judgment on April 1, 1957 upholding the appellee's title to United States citizenship (R. 27-36). The nub of the court's holding is found in its Conclusion of Law II (R. 34):

> "The plaintiff could not expatriate himself or lose or abandon his United States of America Citizenship by taking an oath of allegiance to the Finnish Government or by serving in the Finnish Army or by voting in a Finnish election because he did

not know he was a citizen of the United States of America when he did those things, and the plaintiff has not expatriated himself or lost or abandoned his United States of America citizenship by doing those things with such lack of knowledge."

This appeal contests the judgment declaring appellee a citizen of the United States.

APPLICABLE STATUTES

Sec. 401 of the Nationality Act of 1940, 54 Stat. 1168, directed that:

"A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

* * *

"(b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state; or

"(c) Entering, or serving in, the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state; or

* * *

"(e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory."[3]

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[3] While these statutory provisions are controlling here we point out that similar pronouncements are found in the legislation now in effect. Sec. 349, Immigration and Nationality Act of 1952, 8 U.S.C. 1481.

QUESTIONS PRESENTED

I. Did appellee lose the American citizenship he acquired at birth abroad by performing military service in the Finnish Army?

II. Did appellee lose such American citizenship by voting in a political election in Finland in 1946?

III. Was such loss of citizenship precluded because of appellee's assertion that he was not aware of his claim to American citizenship, although he admittedly knew that his father was a naturalized citizen of the United States?

SPECIFICATIONS OF ERROR

The errors specified by appellant are set forth at pages 98 and 99 of the printed record.

SUMMARY OF ARGUMENT

I.

It is not disputed that appellee's father was a naturalized citizen of the United States and that appellee derived citizenship from him at the time of his birth in Finland. The sole question is whether that citizenship was lost.

Appellant does not contend that appellee lost his citizenship by taking an oath of allegiance, since appellee was a minor when the oath was taken. Appellant likewise does not contend that expatriation resulted from the

first two periods of military service, since there was then no law prescribing such loss.

II.

Appellee lost his citizenship under Sec. 401(c) of the Nationality Act of 1940 by his service in the Finnish Army from June, 1941 until October, 1944. The court below did not find that this service was involuntary. However, if the question arises we believe voluntariness is amply established.

The mere fact that the service was performed under a conscription law does not necessarily connote duress. See *Nishikawa v. Dulles,* 356 U.S. 129 (1958); *Coumas v. Brownell,* 222 F. 2d 331 (C.A. 9, 1955). Ordinarily duress will be present only when an objection to service by one claiming to be an American citizen is disregarded or when the citizen is terrorized into silence in a totalitarian state. No such circumstances are present here.

Under *Nishikawa v. Dulles, supra,* voluntariness is presumed unless it is put in issue. No such substantial issue was raised in the court below.

In any event, the government has met any burden of proof imposed upon it. The record convincingly demonstrates voluntariness because no objection to military service was made, because of appellee's steady advancement in military rank, denoting conspicuously satisfactory service, and because of appellee's clear expression (R. 75-76) regarding his willingness to fight for his country's freedom.

III.

Since appellee admittedly voted in a political election in Finland in 1946 he lost his American nationality under Sec. 401(e) of the Nationality Act of 1940. There is not the slightest suggestion that this exercise of franchise was coerced. The only explanation is that all persons were urged to vote to keep Communists from gaining control of the Finnish Government, and this certainly does not represent legal duress.

IV.

The court's basic premise that appellee could not lose his American citizenship since he was not then aware of his legal status as a citizen seems demonstrably unsound. As a matter of fact the record abundantly shows that appellee always knew of his father's naturalization in the United States. At the very least, he had full knowledge of the facts when he obtained the father's naturalization certificate upon his mother's death in 1945. Yet he voted in a political election in Finland the following year, in 1946.

Knowing these facts, it would have been a simple matter for appellee to have made inquiry to confirm his status. Yet he took no such step and did not mention his possible claim to American citizenship to the American Consul or to the immigration officers, until he was faced with the possibility of deportation.

Even accepting appellee's argument at its maximum, it adds up only to a contention that while he knew

the facts he was unaware of their legal consequences. We believe such a plea must fail.

Although there is no case precisely in point, many analogous decisions can be cited. Most important is *Savorgnan v. United States,* 338 U.S. 491 (1950). There the Court held that the expatriation statutes are expressed in objective terms and provide for loss of citizenship upon the performance of specified overt acts, when voluntarily done, and are not conditioned upon the subject's undisclosed intent or understanding. Other decisions which ratify the same view are *Acheson v. Kuniyuki,* 189 F. 2d 741, 744 (C.A. 9, 1951), rehearing denied 190 F. 2d 897, cert den. 342 U.S. 942; *Acheson v. Wohlmuth,* 196 F. 2d 866, 871 (C.A. D.C. 1952). The same concept was emphatically reiterated by the Supreme Court in *Perez v. Brownell,* 356 U.S. 44, 61 (1958). The majority holding there declared that "it would be a mockery of this Court's decisions to suggest that a person, in order to lose his citizenship, must intend or desire to do so."

The court below consequently erred in finding that expatriation entails a specific intention to relinquish the citizenship right and that the voluntary military service and voting did not result in loss of citizenship.

ARGUMENT

I. Appellant Does Not Dispute the Acquisition of United States Citizenship and Does Not Contend That Such Citizenship Was Lost by Taking an Oath of Allegiance.

In the court below the government conceded that appellee's father was a naturalized citizen of the United States at the time of his birth in Finland in 1907 (R. 7). We do not recede from that concession. However, we point out that although the father unquestionably was naturalized in 1894 his hold on citizenship and residence status in this country was exceedingly tenuous. All told, he remained in the United States only eight years, and left this country two or three years after his naturalization, never to return. Thereafter he continued to live in Finland over 30 years until his death, married and had children, and presumably enjoyed the bounties of Finnish citizenship and residence.

Although subsequent enactments would have divested the father of his claim to American citizenship, no such statute was in effect at the time he forsook the United States in 1896 or 1897. The first legislation was Sec. 2 of the Act of March 2, 1907, 34 Stat. 1228, which declared:

> "That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.
>
> "When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state it shall

> be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years: *Provided, however,* That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe . . ."[4]

resumption of residence in Finland and was in effect only four months at the time of appellee's birth. Even if we were disposed to argue that its terms were retroactive, no such contention was made in the court below and we do not urge it here.

Consequently we do not deny that appellee's father remained a citizen of the United States and that appellee derived United States citizenship from his father under Sec. 1993 of the Revised Statutes. It cannot be overlooked that the son's tie to American citizenship likewise was quite slender, since he was born in Finland and resided there 40 years, enjoyed the privileges of Finnish citizenship, and first asserted a right to American citizenship after deportation proceedings were commenced against him in this country. But these are circumstances which apparently do not impair his original title. The only issue to be resolved in this appeal is whether he subsequently lost his citizenship claim by performing acts of expatriation.

---

[4] More positive pronouncements regarding foreign residence by naturalized citizens were made in Sec. 404 of the Nationality Act of 1940, 54 Stat. 1170, and Sec. 352 of the Immigration and Nationality Act of 1952, 8 U.S.C. 1484.
This statute was enacted ten years after the father's

Appellee took an oath of allegiance at the time of his induction into the Finnish Army, and there is no evidence in the record that he took such an oath on any other occasion. Under Sec. 2 of the Act of March 2, 1907, quoted above, an oath of foreign allegiance normally would forswear United States citizenship. But it appears that appellee was then a few months under the age of 21. In 1928 there was no specific age limitation in the statute. However, it is undisputed that appellee did not lose his citizenship by an oath of allegiance taken during minority even through the oath was uttered in connection with military service which continued after he attained the age of 21. *Soccodato v. Dulles,* 226 F. 2d 243 (C.A. D.C. 1955); *Augello v. Dulles,* 220 F. 2d 344 (C.A. 2, 1955). The oath of allegiance consequently can be excluded from consideration as a cause for expatriation.

II. Expatriation Resulted from the Military Service.

Military service alone did not accomplish loss of citizenship at the time the first two spans of service were undertaken. *De Cicco v. Longo,* 46 F. Supp. 170 (Conn. 1942). However, the third spell of duty was from June, 1941 until October, 1944. Then in effect was Sec. 401(c) of the Nationality Act of 1940, 54 Stat. 1169, which declared that United States citizenship was lost by

> "Entering, or serving in, the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state."

Appellee served in the armed forces of Finland when he was admittedly a national of Finland. Such military service in 1941-1944 expatriated him unless that service was involuntary.

No finding of fact or conclusion of law by the trial court can support a thesis that the military service lacked inherent voluntariness. The court assumed that voluntary acts of expatriation were performed, and its ruling is grounded solely on its conclusion that a person cannot lose citizenship unless he is aware of his legal rights, a hypothesis we examine later. However, on other occasions appellee has argued compulsion, and we therefore address this issue.

There was testimony below that a 1950 law of Finland visited criminal penalties on those who violated universal military service requirements (R. 89-90; Exh. 5). but that legislation has no bearing on this case, since it was activated only after its enactment and was not in effect when appellee's military service occurred.

Even assuming that similar penalties were prescribed earlier (see R. 56, 57), they represent no more than the normal sanctions, similar to those in our selective service legislation, a citizen must endure if he disobeys his country's laws. Duress certainly will vitiate an act of expatriation. But duress cannot be predicated alone on the circumstance that military duties are compulsory or universal. See *Nishikawa v. Dulles,* 356 U.S. 129 (1958); *Coumas v. Brownell,* 222 F. 2d 331 (C.A. 9, 1955). Ordinarily, the defense of duress will be a factor only if opposition to service by one claiming status

as an American citizen is overridden or when the coercive climate in an authoritarian state stills his tongue and prevents him from asserting his plea for exemption. See *Coumas v. Brownell, supra.*

But no such circumstances are present here. No relief from service was sought. Moreover, the military enrollment was not in a totalitarian state whose repressive measures and secret police might have suppressed the desire to object.

Under the Supreme Court's formulation in *Nishikawa v. Dulles, supra,* the government can rely on a presumption that an act of expatriation was voluntary unless the issue of voluntariness is injected by proof in the record. The Supreme Court indicated that conscription alone does not project an issue of voluntariness, and we believe there is nothing in the record to overcome the normal assumption that a man's actions are deemed voluntary.

But even if we are mistaken in this assumption, it is our conviction that the government has abundantly met the burden of proof imposed upon it. That burden is satisfied when the evidence in the record, viewed in totality, establishes clearly, unequivocally and convincingly that the military service was uncoerced. See *Nishikawa v. Dulles, supra; Coumas v. Brownell, supra.*

This is not a case of an American citizen trapped in a dictatorial land, as in *Nishikawa.* Rather it concerns a man born and raised in Finland, who was and always

regarded himself as a Finnish citizen, and who was responding to a call to duty from the democratic government in the only motherland he had ever known.

There is not the slightest whisper of any protest. True, like most conscripts, appellee would have preferred to remain in the comfort and safety of his home. But everyone was required to go, and as a loyal Finnish citizen he answered his country's call (R. 49, 57, 85).

Additionally, the voluntariness of this service repeatedly is attested in the record. In the first place, as we have noted, there was never any vocalized objection to the military service (R. 77, 21; Dep. H. 7). Second, he took an oath of allegiance without protest (R. 49, 50, 76, 77). While this oath related to an earlier period of service, it is an element in the total pattern.

A third circumstance is appellee's steady enhancement in military rank, commencing with private and ending as a first lieutenant. The court below is patently in error in finding that these were the natural reward for longevity of service (R. 31). Not only is such an assumption contrary to all experience, but it directly conflicts with the testimony of appellee himself (R. 74, 75). The military authorities certainly would not have favored him if his services were not conspicuously satisfactory or if there was any indication that he was disloyal, disaffected, or recalcitrant.

Finally, the voluntariness of the service is underscored by appellee's entirely commendable endorsement of the democratic principles of his government,

and his repeatedly expressed wish to support it in its fight for freedom against foreign invaders. The following excerpt from appellee's testimony is enlightening (R. 75-76):

> "Q. You were ready at any time over there to fight for Finland's independence, weren't you?
>
> A. Yes, I think so.
>
> Q. You state in a letter to the Immigration Service dated October 25, 1948: 'It is my conviction to uphold what is right and to oppose injustice and tyranny and therefore I have fought for little Finland which was attacked by a great country. The whole world condemned this attack upon Finland. Looking at it from the human point of view how could I have forfeited any possible claims which I may have had to United States citizenship. I am at all times ready to fight for the rights of this country in which I now live if an assault were made against it.'
>
> Now you felt that you were ready at any time, then, to fight for your little country?
>
> A. Yes, that is my feeling because I know nearly every people, every American citizen, will fight to hold freedom."

This willingness to perform military service for Finland is confirmed by his voluntary service in the National Guard of Finland after his military duty had ended (R. 84). And we note that his attachment to his native land extended even to support of its policy in enlisting aid from Nazi Germany during World War II (R. 79).

In our view the record overwhelmingly demonstrates that appellee's military service was not performed under duress of a kind which would vitiate its legal effect.

III. Expatriation Resulted from Voting in a Political Election in Finland.

Under Sec. 401(e) of the Nationality Act of 1940, 54 Stat. 1169, voting in a political election in a foreign state caused loss of United States nationality. In his testimony before the court appellee admitted that he had voted in a national election in Finland, concededly political, on one occasion, in 1946 (R. 57, 81, 82). His testimony reveals a keen awareness of political affairs in Finland and a desire to support his country in its efforts to preserve its independent democratic institutions (R. 71-76). Under the statute this act of voting was itself sufficient to cause loss of American citizenship. However, appellee seeks to elude this consequence by contending that he was compelled to vote. The only compulsion he has described, however, consisted of public pleas urging everyone to aid in preserving the Finnish Government from the Communists (Id.) The court describes appellee's situation in its Finding of Fact VIII (R. 31):

> "The plaintiff voted in the general political election in Finland in approximately 1946. At that time all persons were urged to vote to keep Communists from gaining control of the Finnish Government."

It is evident that no legal duress has been established. Similar claims of moral compulsion were rejected in *Acheson v. Kuniyuki,* 189 F. 2d 741 (C.A. 9, 1951), rehearing denied 190 F. 2d 897, cert. den. 342 U.S. 942; and *Acheson v. Wohlmuth,* 196 F. 2d 866 (C.A. D.C. 1952). These cases involved respectively voting in Japan

and Germany at the time they were occupied by American military authorities. The affected individuals contended unsuccessfully that the voting was undertaken at the urging of the occupying American officials. If duress did not exist under such circumstances, then it could hardly be found when the voting took place in a country not under military occupation.[5]

Here we do not have a voting ritual performed at the command of a police state. Appellee admitted and emphasized that during the critical periods Finland was a republic, in which the normal democratic processes functioned. No one compelled him to vote and his motivation, laudable enough, was to do his part in improving his country's lot. By any rational test appellee cast his ballot freely and voluntarily.

IV. Expatriation Was Not Avoided by Appellee's Ignorance of the Legal Consequences of His Actions.

The trial court's sparse opinion apparently assumes that appellee had committed at least one act of expatriation but found that he "did not know that he was a citizen at the time he did the things which were alleged to have cost him his citizenship" (R. 27). Observing that this was a case of first impression, the court took the position that expatriation entailed the intentional relin-

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[5] Special legislation has permitted expeditious resumption of American citizenship by those who lost such citizenship through voting in political elections in Italy immediately after World War II. See Act of Aug. 7, 1946, 60 Stat. 865; Act of Aug. 16, 1951, 65 Stat. 191, as amended by Sec. 402(j), Immigration and Nationality Act of 1952, 66 Stat. 278.

quishment of a known right. The court's view is reflected in its Conclusion of Law II (R. 34):

> "The plaintiff could not expatriate himself or lose or abandon his United States of America Citizenship by taking an oath of allegiance to the Finnish Government or by serving in the Finnish Army or by voting in a Finnish election because he did not know he was a citizen of the United States of America when he did those things, and the plaintiff has not expatriated himself or lost or abandoned his United States of America citizenship by doing those things with such lack of knowledge."

The court's reasoning would have been more plausible if it appeared that appellee never knew that his father was a citizen of the United States. But the record decisively refutes such a supposition. In the deportation hearing appellee testified that he remembered his father stating he was a citizen of the United States and could return to the United States at any time if necessary and that appellee himself never sought the shelter of American citizenship, since he never "dared to make that claim, but it has always been sort of a thought in my mind" (Dep. H. 5). In his court testimony he likewise stated that his father had told him that the father had become a citizen of the United States during his brief residence in this country (R. 48). He also declared in his court testimony that he first saw his father's naturalization papers for United States citizenship when his mother exhibited them to him a week before her death (R. 54). The court concluded that he had found the naturalization certificate among his mother's personal belongings, shortly after her death in 1945 (R. 31).

We believe the record necessarily supports a finding that during all his years of maturity appellee knew that his father had been naturalized in the United States. At the very least it is certainly established as a fact, and found by the court, that he knew in 1945 that his father had been naturalized in the United States. Yet he voted in a political election in Finland the following year, in 1946.

Appellee alleges, however, that neither his father nor anyone else ever informed him that he himself might have title to United States citizenship. Obviously appellee, a man with solid educational background, for many years harbored a belief that he had such a claim, since he has testified that "it has always been sort of a thought in my mind." Moreover, it seems evident that in finding his father's naturalization certificate and bringing it with him to the United States appellee evidently hoped that the certificate might be useful to him at some future time. It seems to us that under these circumstances appellee had a duty to inquire and that he cannot shield himself behind a wall of silence. Although a visit to the nearest American Consulate in Helsinki would have involved a hard journey, it would have been easy enough to address a written inquiry to the Consulate. When appellee wanted a visa he took the necessary trip to Helsinki, but made no mention of his possible claim to American citizenship. It seems to us that appellee was chargeable with knowledge of the rights he could have claimed.

However, even if we were to accept appellee's thesis, it adds up only to an asseveration that he was aware

of his father's status as an American citizen but not of his own derivative rights through the citizenship of his father. Stated differently, his position is that he knew the facts but was unaware of their legal implications.

Familiar authorities tell us that such a plea must fail. For a person who knows the facts is charged with knowledge of their legal consequences. The statute has fashioned objective formulas for the acquisition of United States citizenship and for its loss. A person who knows the facts cannot avert the legal effects of his actions by a plea that he was not aware of those consequences.

We have been unable to find any case completely in point. However, there are a number of analogous precedents. The fountainhead authority, of course, is *Savorgnan v. United States,* 338 U.S. 491 (1950). There a woman was deemed to have lost her American citizenship by taking an oath of allegiance and by accepting naturalization in a foreign state, even though she contended that she had not intended to give up her American citizenship and had not understood that she was doing so. The Court found (p. 499) that

> ". . . the acts upon which the statutes expressly condition the consent of our Government to the expatriation of its citizens are stated objectively. There is no suggestion in the statutory language that the effect of the specified overt acts, when voluntarily done, is conditioned upon the undisclosed intent of the person doing them."

And the Court went on to state (p. 500) that a person cannot "preserve for himself a duality of citizen-

ship by showing his intent or understanding to have been contrary to the usual legal consequences of such an act." In *Savorgnan* the Court followed its earlier holdings in *Mackenzie v. Hare,* 239 U.S. 299 (1915).

Later decisions have adhered to this conception. Thus, in *Acheson v. Kuniyuki,* 189 F. 2d 741, 744 (C.A. 9, 1951) this Court rejected a plea that a dual national at birth who had voted in Japanese elections was unaware that she thereby lost her United States citizenship. The Court said:

> "The fact, if it be a fact, that she did not intend to lose her nationality and did not know that she would lose it if she voted in these elections is immaterial."

In applying for a rehearing Kuniyuki objected to the Court's statement that knowledge of consequences was not essential. However, this Court denied the application, 190 F. 2d 897 (C.A. 9, 1951). The Court declared that its finding was required by *Savorgnan,* and quoted from the Supreme Court's opinion in that case. Moreover, the Court also observed that the Supreme Court's statement that the expatriation standards are expressed "objecively" merely condensed the more detailed exposition of the lower court in the *Savorgnan* case, 171 F. 2d 155, 159:

> "Nor is the fact that she was misinformed or mistaken as to the legal consequences of her conduct of any significance here. One cannot avoid the force of a statute by asserting a mistaken conclusion as to its sanctions or effects. If these factors were permitted consideration, the operation of the statute would depend not upon the voluntarily performed act of becoming naturalized in a foreign

> state, but upon the extent of the legal knowledge and the subjective intention or motivation of the person involved. Such tests cannot be used to determine the operation of the statute."

After discussing the opinions in the *Savorgnan* case this Court went on to observe in the *Kuniyuki* reargument that these opinions were "but a restatement of the ancient rule that ignorance of the law is no excuse. Nor may facts which show no more than a possible ignorance of the legal consequences of appellee's acts be made no serve as proof of compulsion." The Supreme Court denied certiorari, 342 U.S. 942.

A similar situation was before the court in *Acheson v. Wohlmuth,* 196 F. 2d 866, 871 (C.A. D.C. 1952), which also involved voting in alleged ignorance of the consequences. The court said:

> "A person cannot avoid the consequences which Congress has attached to his overt acts by claiming ignorance of the law or a contrary intention on his own part in performing those acts, even though loss of citizenship is the result."

Of course, the most recent authority is *Perez v. Brownell,* 356 U.S. 44, 61 (1958). The Court there ratified its earlier holding in *Savorgnan* and observed:

> "But it would be a mockery of this Court's decisions to suggest that a person, in order to lose his citizenship, must intend or desire to do so. The Court only a few years ago said of the person held to have lost her citizenship in Mackenzie v. Hare, supra: 'The woman had not intended to give up her American citizenship.' Savorgnan v. United States, 338 U.S. 491, 501, 70 S.Ct. 292, 298, 94 L.Ed. 287. And the latter case sustained the denationalization of Mrs. Savorgnan although it was

> not disputed that she 'had no intention of endangering her American citizenship or of renouncing her allegiance to the United States.' 338 U.S., at page 495, 70 S.Ct. at page 294. What both women did do voluntarily was to engage in conduct to which Acts of Congress attached the consequence of denationalization irrespective of—and, in those cases, absolutely contrary to—the intentions and desires of the individuals. Those two cases mean nothing—indeed, they are deceptive—if their essential significance is not rejection of the notion that the power of Congress to terminate citizenship depends upon the citizen's assent."

We believe these holdings and expressions ineluctably reject the basic assumption of the court below that expatriation entails a specific intention to relinquish the citizenship right. On the contrary, the grounds for expatriation are stated objectively and do not depend on the citizen's intentions or wishes. Since appellee performed uncoerced military service and voluntarily voted in a foreign election he has committed acts of expatriation within the statutory design.

CONCLUSION

It seems evident that appellee's tie to the United States, slender at best, was severed by at least two distinct acts of expatriation. Each was voluntarily performed and, under the statutory injunction, resulted in the loss of his claim to United States citizenship. This is not a case involving a native born citizen, whose constitutional birthright is jeopardized. Since appellee was born ouside the United States, any status he may have inherited from his father emerges from a legisla-

tive grant and he is equally subject to the statutory edict divesting him of American citizenship. We note also that rejection of his claim would not make appellee stateless. It would merely confirm what to him was an established fact, acted on throughout his entire life, that he is a citizen of Finland.

We respectfully submit that the judgment declaring appellee to be a citizen of the United States is clearly erroneous and should be reversed.

Respectfully submitted,

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EXHIBITS ADMITTED INTO EVIDENCE

Exhibit No.	Offered	Admitted
1	R 61	R 61
2	92	92
3	92	92
4	92	92
5	92	92
6	93	93